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UNCLAS SECTION 01 OF 09 THE HAGUE 002794

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STATE FOR AC/CB, NP/CBM, VC/CCB, L/ACV, IO/S
SECDEF FOR OSD/ISP
JOINT STAFF FOR DD PMA-A FOR WTC
COMMERCE FOR BIS (GOLDMAN)
NSC FOR CHUPA
WINPAC FOR LIEPMAN

E.O. 12958: N/A

TAGS: [PARM](#) [PREL](#) [RS](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): WRAP-UP FOR
THE EIGHTH CONFERENCE OF STATES PARTIES (CSP-8)

REF: STATE 295421

This is CWC-113-03.

SUMMARY

1. (U) The U.S. accomplished all of its primary objectives at the Oct. 20-24 OPCW Eighth Conference of States Parties (CSP-8). The Conference approved the U.S. request for an extension of its 45% destruction deadline to December 2007 and extended in principle the U.S. 100% destruction deadline. There was agreement on the 2004 OPCW budget with an increase of 6.7%, retention of the 2001 cash surplus, and future consideration of steps for retention of Article IV/V surpluses. Action plans on universality and on national implementation under Article VII were also approved. The ICRC request to address the CSP was not/not approved. Finally, on the issue of the ILO decision regarding former Director-General (DG) Bustani, the Conference Chairperson (Ariffin/Malaysia) issued a statement by which the Conference approved a proposal instructing the OPCW's lawyers to attempt to negotiate a settlement and, if settlement efforts failed, reserving to the OPCW the right to seek reconsideration by the ILO Administrative Tribunal of the amount of damages awarded. End Summary.

U.S. EXTENSION REQUEST

2. (U) The U.S. and Russia came to agreement on our respective CW destruction extension requests. The CSP approved the U.S. request to extend its intermediate 45% CW destruction deadline to December 31, 2007 as well as Russia's 20% CW deadline to April 29, 2007. The Conference also took a decision to extend Russia's 45% and 100% destruction deadlines "in principle." In order to satisfy WEOG and other States Parties' concerns regarding the United States' intermediate 45% deadline going beyond the final deadline of April 29, 2007, the U.S. agreed also to extend its final destruction deadline "in principle".

3. (U) The primary source of disagreement between the U.S. and Russia was the matter of including site-visits as a condition for supporting each other's extension requests. The U.S., as well as a number of WEOG members, believe that site-visits are an important transparency feature that ought to be maintained as a condition for approving Russia's 20% extension request as well as for its "in principle" extension requests. However, concerns over reciprocity resulted in the U.S. accepting Russia's condition of no site visits for either side, as well as discontinuing extra-Convention CW destruction program reporting requirements.

4. (U) At the eleventh hour, the French insisted, as a condition for joining consensus, that text from paragraph 28, Part IV(A) of the Verification Annex, dealing with a State Party's requirement to report to the Executive Council (EC) on its final phase of destruction activity, be inserted in the decision document. The French stated that the added text would provide reassurance to concerned States Parties that Russia's 100% CW "in principle" extension meets the same transparency measures applied to an approved date positive for extension. The French also stated that the added text lessens the ambiguity many WEOG members believe exist with the extension "in principle" concept.

2004 OPCW BUDGET

5. (U) The Conference adopted a 73,153,390 Euro budget for 2004 in its Decision on the Programme and Budget and Working Capital Fund (C-8/DEC/CPR.17). This came on the final day of

CSP-8, only hours after the Director-General, the Director of Administration (Schulz/US), the budget facilitator (Beerworth/Germany), and U.S. and other key contributors hammered out a package that also included a Decision on Withholding Distribution of the 2001 Cash Surplus (C-8/DEC/CRP.8/Rev.1) and a note by the Director-General (C-8/DG.6). The DG's Note explains how he proposes to deliver the full core program of OPCW activities while also providing an additional 250,000 Euros for International Cooperation and Assistance, all within a 6.7% overall budget increase (below his earlier bottom line of 7.36%). All requirements established in guidance were met, including language in the budget decision document concerning consultants, indications of where reductions will be made to reach the 6.7% budget level, and a clear marker laid concerning our desire for more emphasis on OCPF inspections in future years.

16. (U) This package calls for establishing a special account funded by withholding the remainder of the 2001 cash surplus with a separate CSP decision. Of the surplus, 1.355 million Euros is to cover the costs of implementing the previous CSP's tenure decision; and a further 250,000 Euros will finance the ICA increase to be returned back to the surplus through efficiency savings in the course of 2004. The DG is authorized to draw on the rest of the surplus to maintain the ICA and inspection programs or for other exceptional needs, subject to prior approval by the Executive Council, and is to report on the use of the funds to the Ninth CSP.

17. (U) On Article IV and V Income, the Conference requested the Executive Council and the Director-General to examine ways to enhance financial stability and facilitate smoother program delivery. This decision drew on the EC's decision to study Article IV and V funding options including the possible establishment of a Program Stabilization Fund.

ARTICLE VII - NATIONAL IMPLEMENTATION ACTION PLAN

18. (U) The Conference adopted the Plan of Action recommended by the October 21 special session of the Executive Council. At the start of the CSP, India and Iran had threatened to block consensus on the document. As approved by Washington, Ambassador Javits, the facilitator (Consuelo Femenia/Spain) and members of the U.S. delegation met with Indian and Iranian delegation members to reach agreement on two critical issues: 1) that "it is imperative" that member states fulfill obligations under Article VII by the CSP-10 deadline, and 2) that the Conference, at CSP-10, will "consider and decide upon appropriate measures, if necessary" to address a States Party's failure to meet this obligation. The Indian and Iranian delegation were amenable to this implementation as an important obligation without the direct or indirect reference to Article XII, thus leaving the option open for the Conference to, as the situation calls for, decide upon further assistance, extension of timeline or punitive measures.

UNIVERSALITY ACTION PLAN

19. (U) The CSP endorsed the Universality Action Plan adopted by the second Special session of the EC convened during the Conference. The final text, worked out in two intense informal discussions late in the week, includes the two key elements sought by the USG, designating "points of contact" by States Parties for the effective promotion of universality, and calling on the Technical Secretariat to prepare a comprehensive annual document that will "set indicative targets for increased membership."

110. (U) The Conference noted the DG's report on implementation of the CSP-7 recommendation on ensuring the universality of the Convention. It accepted South Korea's proposal not to adopt a similar recommendation in 2003 in light of the adoption of a more concrete Action Plan by the EC.

REQUESTS TO ATTEND/ADDRESS CSP-8

111. (SBU) Iraq and Libya were granted non-speaking, observer status for the Conference. Prior to the opening of the CSP, Amb. Javits met with the CSP-7 Chairman (Djoudi/Algeria) to emphasize the U.S. objection to the request from the ICRC to address the Conference (reftel). Javits noted that the States Parties had a full agenda for CSP-8. The Chairman suggested a compromise by which the ICRC would be allowed to speak "if time allows," recognizing that there would be no time available. Javits objected to the proposal, stressing the point that acceding to the ICRC

request even in principle would set a bad precedent. The OPCW would not be able to deny other NGOs or international organizations the right to address future Conferences. Should the States Parties wish to hear from the ICRC or some other body, stressed Javits, then the member states can invite that organization to speak. The General Committee agreed to deny the ICRC request.

BUSTANI JUDGMENT

¶12. (U) The Conference addressed the Bustani issue late on October 24th. Through a statement delivered by the Conference Chairperson, the Conference approved a proposal instructing the OPCW's lawyers to attempt to negotiate a settlement, and, if settlement efforts failed, reserving to the OPCW the right to seek reconsideration by the ILO Administrative Tribunal of the amount of damages awarded. Following Conference approval of the Chair's proposal, the Brazilian representative stated that he could not associate himself with the proposal, and claimed that ILOAT awards are required to be implemented immediately under international law.

¶13. (U) Brazil asserted that failure to make immediate payment was a violation of international law, and strongly implied that the OPCW and the Conference were guilty of such a violation. The Brazilian representative requested that his statement be included in the Conference Report. Canada noted that it was concerned by the fundamental question of the Tribunal's jurisdiction, but concluded it would not block consensus in view of the general support for the Chair's proposal. Ambassador Javits then delivered the USG response, cleared in Washington, refuting the implication that the OPCW's conduct could in any sense be viewed as a violation of international law. He noted that the process outlined by the Chair is fully consistent with existing legal procedures and that it would be premature and imprudent for the OPCW to make any payment decision, before all proper options could be explored, including reducing the damages. Ambassador Javits also noted the rashness implicit in Mr. Bustani's filing of an execution order with the ILOAT on Monday, October 20, before the Conference had even had time to address the matter. Ambassador Javits further stated his understanding that the Chairperson's statement regarding the OPCW "reserving for itself" the right to seek a review meant that the Organization will indeed return to the ILO on the issue of material damages should the negotiations fail, to which there was no objection stated. The Ambassador requested that his statement also be added to the Conference Report.

¶14. (U) The following are the results of other agenda items.

AGENDA ITEM ONE - OPENING OF THE SESSION

¶15. (U) CSP-7 Chairman Djoudi opened the session. The Conference approved the participation of nine NGOs and two chemical industry associations. The ICRC was included in the list of "international organizations, specialized agencies, and other international bodies" attending the CSP.

AGENDA ITEM TWO - ELECTION OF THE CHAIRMAN

¶16. (U) The conference elected by acclamation as Chairperson Ambassador Noor Farida Arrifin of Malaysia.

AGENDA ITEM THREE - ELECTION OF VICE CHAIRMEN AND OTHER OFFICERS

¶17. (U) The CSP elected the following ten States Parties as Vice-Chairs: Bosnia, Guatemala, India, Japan, Mexico, Nigeria, Poland, South Africa, Switzerland and the United States. Ambassador Djoudi was elected Chairman of the Committee of the Whole.

AGENDA ITEM FOUR - ADOPTION OF THE AGENDA

¶18. (U) The Agenda was adopted without debate.

AGENDA ITEM FIVE - ORGANIZATION OF WORK AND ESTABLISHMENT OF SUBSIDIARY BODIES

¶19. (U) The agenda item was adopted without debate.

AGENDA ITEM SIX - APPOINTMENT OF THE CREDENTIALS COMMITTEE

120. (U) The following ten members of the Credentials Committee were elected to hold office until the next CSP: Austria, Cameroon, Cuba, Czech Republic, Jordan, Namibia, Pakistan, Portugal, Ukraine and Uruguay.

AGENDA ITEM SEVEN - STATEMENT BY THE DIRECTOR-GENERAL

121. (U) In his opening statement, DG Pfirter said destruction activities were continuing at "a good pace" and noted that on average one new State Party had acceded to the CWC every month over the preceding year. He alluded to calls from the Staff Council to suspend implementation of the previous CSP's decision to impose tenure limits on OPCW staff until the ILO Administrative Tribunal ruled on the suits brought by a number of OPCW inspectors whose contracts had not been renewed. The DG noted that implementation had already begun and that any move to suspend further action would have to be taken by the CSP, which had made the initial decision. No States Party moved to suspend implementation.

AGENDA ITEM EIGHT - GENERAL DEBATE

122. (U) Ambassador Javits delivered the U.S. statement, which has been included on the OPCW Internet site for the Conference. A total of 38 other delegations made statements. Most noteworthy were statements from Arab delegations (Algeria, Qatar) alleging that Israel had extensive chemical and other WMD stocks, and the statement from Panama that referred to the issue of San Jose Island.

AGENDA ITEM NINE - STATUS OF IMPLEMENTATION OF THE CONVENTION

123. (U) The Conference noted the Report on National Implementation Measures (C-8/DG.5 dated 18 September 2003) after agreeing to minor corrections to the text as requested by Belgium and Iran. Iran noted that Annex 1 did not correctly reflect the contents of its Note Verbale to the TS and requested that it be revised to show that its legislation covers all areas key to enforcement and that the text of its measures to date has been provided.

124. (U) The Conference noted the Report by the DG on Implementation of the Regime governing the Handling of Confidential information by the Technical Secretariat in 2002

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(EC-32/DG.16 C-8/DG.1, dated 12 March 2003), presented to the Conference in accordance with paragraph A.3 of the Confidentiality Annex.

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125. (U) The Conference noted the Note by the DG on a non-exhaustive list of illustrative examples of chemical weapons that meet the definitions contained in Article II, subparagraphs 1(b) and 1(c) of the Convention (C-8/DG.2, dated 10 April 2003).

AGENDA ITEM TEN - REPORT OF THE OPCW FOR 2002

126. (U) The Conference approved the draft report of the OPCW on the implementation of the Chemical Weapons Convention in 2002 (EC-34/4/C-8/CRP.1, dated September 2003). The German Delegation requested that the draft report be amended to reflect that the FRG submitted Article 10 declarations during 2002. The German amendment was also approved by the Conference.

AGENDA ITEM ELEVEN - REPORT OF THE EXECUTIVE COUNCIL

127. (U) The Conference noted the report of the Executive Council on the performance of its activities in the period from 17 July 2002 to 27 June 2003 (EC-34/3 C-8/3, dated 23 September 2003). The report was introduced by the EC Chairman, Ambassador Petr Kubernat of the Czech Republic, who also introduced the recommendations of the Council that required the attention of the Conference, including those made after the cut-off date for the above report.

128. (U) Among the noteworthy items recommended after the cut-off date for the above referenced report, is the report of the visit by the EC Chairman and by the States Parties Experts Group to the Gorniy CW destruction facility and to

construction sites in Kambarka and Shchuch'ye in the Russian Federation on 6-10 October 2003. In his introduction, the Chairman specifically referenced the report's observation that Russia's efforts to destroy 20% of its Category 1 chemical weapons stockpiles by the 29 April 2007 deadline it has proposed may be hindered by delays caused, inter alia, by slippages in construction schedules and in construction starting dates, by financial constraints, and, possibly, by the need to provide social infrastructure to local populations in advance of the construction of CWDF's.

129. (SBU) The Conference approved the request by "another States Party" for an extension of its 45% destruction deadline.

130. (U) The Conference granted final approval to the procedures for revising the technical specifications for approved equipment, approved provisionally by the 31st Executive Council (EC-31/DEC.8, dated 12 December 2002). The final approval is contained in C-8/DEC/CRP.6, dated 10 October 2003.

131. (U) The Conference adopted a decision (on "Boundaries of Production") on understandings regarding declarations under Article VI and Parts VII and VII of the Verification Annex to the Convention (C-8/DEC/CRP.13/Rev.1, dated 22 October 2003).

132. (U) At an October 24 Special Session, the Executive Council considered and deferred a decision on the issue of Captive Use until its next regular session. The Indian, Chinese and Russian Federation delegations blocked consensus on grounds that last-minute changes to the text made by the facilitator (Rudduck/UK) as a result of sidebar discussions during the Conference would need to be reviewed by technical experts in capitals. Late changes made to the text clarify the exclusion of transient chemicals from declaration, drawing upon text already approved in the Boundaries of Production decision text approved by the Conference. The facilitator did not circulate a text prior to the session to allow for sufficient review by States Parties, opting instead to include announcement of the changes during his statement to the EC.

133. (U) The Conference noted the audited financial statements of the OPCW for the year 2002, including the response of the DG to the External Auditor's report (EC-33/DG.5 C-8/DG.3, dated 10 June 2003). These audited financial statements, and the External Auditor's report and opinion, were forwarded by the Council to the Conference with its comments (subparagraph 17.2 of EC-34/5, dated 26 September 2003), in accordance with Financial Regulation 13.10.

134. (U) The Conference noted the report of the Office of Internal Oversight (OIO) for the period from 1 January to 31 December 2002, and the accompanying note by the Director-General (EC-34/DG.4, dated 17 June 2003; Corr.1, dated 18 August 2003; and Corr.2 dated 19 September 2003) transmitted to the Conference by the 34th Executive Council Session. The Conference also noted the comments of the Council at its 34th Session on the work carried out by the OIO (paragraph 16 of EC-34/5, dated 26 September 2003). The Brazilian Delegation specifically requested to note the comments of the 34th Session on the work carried out by the OIO. The Brazilian Delegation also requested an additional sentence to the Conference Report be added that mandated that the Conference "review the matter of recruitment and appointments." Ambassador Javits objected to the Brazilian proposal, stressing that there had been no such agreement by the Conference. Canada spoke in support of Ambassador Javits, and the Brazilian request was not adopted.

135. (U) The Conference approved the amendments to the Financial Regulations that the DG had submitted to it through the Council (C-8/DEC/CRP.10 dated 16 October 2003).

136. (U) The Conference noted the Note by the DG on the use of the Working Capital Fund, which the Council had forwarded to it (EC-34/DG.12, dated 12 September 2003).

AGENDA ITEM TWELVE - ELECTION OF MEMBERS OF THE EXECUTIVE COUNCIL

137. (U) CSP-8 elected the following States Parties to the Executive Council to serve a term of two years commencing on 12 May 2004:

African Group:
Algeria, Kenya, Morocco, South Africa

Asian Group:
Iran (Islamic Republic of), Malaysia, Pakistan, Sri Lanka

Eastern European Group:
Russian Federation, Serbia and Montenegro, Ukraine

Latin American Group and the Caribbean:
Cuba, Panama, Peru, Uruguay

Western European and Others Group:
Greece, Netherlands, New Zealand, Norway, Spain

AGENDA ITEM THIRTEEN - PROGRAMME AND BUDGET OF THE OPCW

138. (U) The Conference did not agree to the DG's proposal to increase the number of Article VI inspections (EC-34/DG.11, dated September 4, 2003), from 132 to 150, to be conducted in 2003 resulting from cost-savings achieved by the Technical Secretariat's optimization and efficiency efforts. Consensus on this issue was blocked by the Germans, who are concerned that such an increase would set a precedent for the Technical Secretariat to conduct activities at levels exceeding the negotiated program of work. It emerged, during the course of discussion, that after the EC had told the DG not to proceed with these inspections and forwarded the issue to the CSP for consideration, six additional inspections above the approved level were conducted.

AGENDA ITEM FOURTEEN - SCALE OF ASSESSMENTS

139. (U) After a substantial amount of last-minute confusion, the Conference adopted the use of the forthcoming 2004 UN scale of assessments modified for differences in membership, as the basis for the OPCW 2004 scale. The U.S. delegation appreciated the expert advice on scale issues provided by IO/S on short notice.

AGENDA ITEM FIFTEEN - FOSTERING OF INTERNATIONAL COOPERATION FOR PEACEFUL PURPOSES

140. (U) The facilitator (Suarez/Mexico) reported orally to the EC that there is not yet agreement on what proposal should be submitted to the Conference, as requested at CSP-7. As such, the item was not raised at CSP-8. The Conference noted the statements by Iran, India and Pakistan on this matter, and referred this issue to the Council for its further consideration, with a view to the Council forwarding a proposal at CSP-9 for consideration and approval.

AGENDA ITEM SIXTEEN - AGREEMENTS ON THE PRIVILEGES AND IMMUNITIES OF THE OPCW

141. (U) The Conference adopted the decision on the draft agreement between Bosnia and Herzegovina and the OPCW on the privileges and immunities of the OPCW (C-8/DEC/CRP.1, dated 25 September 2003).

142. (U) The Conference adopted the decision on the draft agreement between the Republic of Burundi and the OPCW on the privileges and immunities of the OPCW (C-8/DEC/CRP.2, dated 25 September 2003).

143. (U) The Conference adopted the decision on the draft agreement between the Republic of Cyprus and the OPCW on the privileges and immunities of the OPCW (C-8/DEC/CRP.3, dated 25 September 2003).

144. (U) The Conference adopted the draft decision on the draft agreement between the Slovak Republic and the OPCW on the privileges and immunities of the OPCW (C-8/DEC/CRP.4, dated 25 September 2003).

145. (U) The Conference considered and adopted the decision on privileges and immunities agreements between the OPCW and States Parties (C-8/DEC/CRP.5, dated 7 October 2003).

146. (U) The U.S. delegation made a statement from the floor noting that these agreements, like others previously adopted, go well beyond the status, privileges, and immunities required by the Convention and well beyond what the U.S. would be prepared to accept in its own bilateral agreement with the OPCW.

AGENDA ITEM SEVENTEEN - ENSURING THE UNIVERSALITY OF THE CONVENTION

147. (U) The Conference noted the report by the DG on the implementation of the recommendation of CSP-7 on ensuring the universality of the Convention (C-8/DG.4, dated 1 August 2003).

AGENDA ITEM EIGHTEEN - REPORTS OF SUBSIDIARY BODIES

148. (U) Conference action under the heading "Reports of Subsidiary Bodies" was handled in perfunctory fashion. The Conference adopted the Report of the Credentials Committee noting that representatives from 116 States Parties and states participating on a provisional basis were represented at the Conference. Other subsidiary bodies were not called upon to report.

AGENDA ITEM NINETEEN - ANY OTHER BUSINESS

149. (U) See Bustani discussion in paragraphs 12 and 13.

150. (U) In General Committee ("Bureau") discussions, the U.S. made the point that it might be more advantageous for each CSP to elect the officers for the subsequent CSP, particularly the Chairman. The U.S. provided the text of the proposed amendment of Rule 34 for consideration.

AGENDA ITEM TWENTY - DATE AND DURATION OF THE NEXT REGULAR SESSION OF THE CSP

151. (U) The Conference decided to hold its ninth session from November 29 to December 3 or, if facilities were unavailable for that week, for the period December 6-10.

AGENDA ITEM TWENTY-ONE - ADOPTION OF THE REPORT OF THE CSP

152. (U) The report was adopted by the Conference.

INFORMAL CONSULTATIONS WITH TS ON OPTIMIZING VERIFICATION

153. (U) The U.S. met with a team of approximately ten Technical Secretariat Verification and Inspectorate Directorate personnel (headed by Dr. Reeps, Director of Verification) to discuss specific questions regarding the TS's and U.S.'s concept for verification. Both sides were

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encouraged with the fact that, conceptually, our ideas on what is required for verification are closely aligned, and both concepts provided a good opportunity to reduce existing TS inspector manpower levels at operating U.S. CW destruction

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facilities.

154. (U) It was agreed that we must take a "systems approach" to verification with the goal of better understanding the inter-relationship between verification activities at chemical weapon storage facilities and chemical weapon destruction facilities. From this understanding we are confident that we can identify and focus on activities (or reference points) that are absolutely essential for verification.

155. (U) Aside from general questions presented to the TS on their concept paper, del emphasized the following points with regard to the evaluation criteria we would apply in determining the suitability of the concepts being considered; 1) maintaining effective verification of other States Parties; 2) ensuring the concept does not disrupt CW destruction operations; 3) any quantitative measurements decided upon must not lead to potential CWDF compliance issues; 4) final verification system determinations will be made on a facility-by-facility basis and; 5) establishment of an effective and efficient verification process, not simply the notion of an "across-the-board" manpower reduction of plus-or-minus 30%. The TS proposed that the next near-term steps include an "expert" workshop to work through questions on the specific elements of each other's verification proposals, and a site visit or visits to a U.S. facility or facilities to develop verification system concept case studies.

156. (U) Javits sends.
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